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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7631 OF 2019

Mursheed Ali s/o. Md. Soleman Ali	..Petitioner
vs.	
Nasima Khatun w/. Mursheed Ali	..Respondent

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Shri N.R. Vidhwans for petitioner.

Shri Zaheer Khan Pathan a/w. Zaid Anwar Qureshi for respondent.

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CORAM : M.S.KARNIK, J.

DATE : 1st OCTOBER, 2019

P.C. :

Heard learned counsel for the petitioner.

2. The petitioner is the husband. The marriage between the petitioner and respondent was solemnized on 8/7/2014. The respondent – wife filed a Marriage Petition before the Civil Judge, Senior Division, Pune, for seeking dissolution of the

marriage under Section 2(viii)(a)(b) or 2(ix) of the Dissolution of Muslim Marriages Act, 1939 and for such other reliefs including that of maintenance and compensation.

3. The present Petition is filed for setting aside the order passed below Exhibit 40 by which the application filed by the petitioner for setting aside “No W.S.” order is rejected. The petitioner has also challenged the order passed below Exhibit 39 for taking his written statement on record.

4. In so far as the application below Exhibit 39 is concerned, it has to be noted that by an order dated 7/9/2017 the trial Court had set aside “No W.S.” order subject to the petitioner paying cost of Rs.2000/-. However, it is stated that the petitioner was having family and financial problems. He was jobless. He prayed that he is willing to deposit the cost. The trial Court, however, rejected the application observing that as he failed to comply with the earlier order below Exhibit 39 the Court proceed without written statement of the respondent by passing order below Exhibit 1. The trial Court therefore

observed that no question arises for permitting the respondent to deposit the cost and take his written statement on record.

5. It is in these circumstances, I first take the challenge to the order passed below Exhibit 40. By the order passed below Exhibit 40 made by the petitioner – husband, the trial Court observed that the examination-in-chief of the witness was recorded on 13/6/2018 and opportunity was given to the respondent for cross examining the witness. The order of “no cross examination” was passed on 19/7/2018.

6. It is the contention of learned counsel for the petitioner that as he is jobless and his parents were not keeping well, it was not possible for him to attend the Court proceedings.

7. Learned counsel for the respondent – wife on the other hand submits that the petitioner is trying to delay the proceedings at every stages. He did not appear before the trial Court for a long time and at the stage when the matter was listed for final arguments, the applications were made below

Exhibit 39 and 40. He further pointed out that on an earlier occasion also the trial Court had imposed cost of Rs.70,000/- which was later paid by the petitioner.

8. I have gone through the orders passed below Exhibits 39 and 40. In so far as the order passed below Exhibit 39 is concerned, the trial Court on an earlier occasion i.e. on 7th September, 2017 already set aside “No W.S.” order by imposing cost of Rs.2000/-. There was delay on the part of the petitioner in depositing the cost of Rs.2000/- citing the reason of his joblessness and illness of his parents. In the present facts, in the interest of justice, the petitioner should not be deprived of an opportunity to defend the Petition.

9. On the last occasion I had asked learned counsel for the petitioner to keep pay orders of Rs.2000/- and Rs.10,000/- as security of cost ready to show his bonafides. Learned counsel for the petitioner has stated that pay orders are ready. In this view of the matter, only with a view to give an opportunity to the petitioner to defend the proceedings and subject to imposing

exemplary costs, I am inclined to set aside the order passed below Exhibit 39 as the petitioner pleaded that he is jobless and his parents were seriously ill whom he had to look after.

10. Subject to payment of cost of Rs.25,000/- to be paid the respondent - wife within a period of 4 weeks from today, the impugned order below Exhibit 39 is set aside. The written statement be taken on record.

11. In so far as the order passed below Exhibit 40 is concerned, as I have allowed the application below Exhibit 39 and permitted the written statement to be taken on record, in the interest of justice, it is necessary to allow the application below Exhibit 40 subject to payment of cost of Rs.25,000/- to be paid to the respondent – wife within a period of 4 weeks from today.

12. The pay orders of Rs.10,000/- and Rs.2000/- are handed over to learned counsel for the respondent – wife by learned counsel for petitioner – husband today. The amount of

Rs.2000/- is towards the cost in terms of an earlier order passed by the trial Court. As the amount of Rs.10,000/- has been paid today by a pay order, the balance of Rs.40,000/- towards the cost to be paid within a period of 4 weeks as stipulated herein before.

13. The petitioner – husband is present in person. Learned counsel for the petitioner – husband on instructions states that the petitioner – husband undertakes to co-operate with the trial Court in expeditious disposal of the Marriage Petition. Considering the conduct of the petitioner – husband it is necessary to impose a condition on the petitioner – husband that he will not seek any unnecessary adjournments before the trial Court. The trial Court is further requested to expedite the Marriage Petition and decide the same preferably within a period of 6 months from today.

14. The Petition is allowed in the above terms.

15. The applications below Exhibits 39 and 40 are allowed.

16. The parties to act on an authenticated copy of this order.

(M.S.KARNIK, J.)

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signed by
Diksha
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